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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/021,709

12/12/2001

Alan Glen Solheim

GSH 08-893504

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30594

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02/22/2006

HARNESSE, DICKEY & PIERCE, P.L.C.

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EXAMINER

PAYNE, DAVID C

ART UNIT

PAPER NUMBER

2638

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/021,709	SOLHEIM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David C. Payne	2638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13,18-20 is/are rejected.
- 7) ☒ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Regarding 18, regarding applicant's assertion that the examiner relies on personal knowledge.  
The examiner disagrees. The text of replete with the idea of testing connections. Furthermore, The NCE 240 is a well-known apparatus providing a centralized monitor and control location for the entire network, typically operated and managed by the service provider or network manager. The NCE 240 coordinates, controls, and manages key network functions, such as network configuration, fault management, performance monitoring, accountability and security. Various means for transmitting the quantified data from the OA 284 to the NCE 240 and various means for receiving command and control messages transmitted by the NCE would be apparent to those skilled in the art. One means for transmitting/receiving data and control messages between the OA 284 to the NCE 240 is to convey the message directly over the optical layer of the network whose performance is being monitored (col./line: 3/67-4/45). This element would therefore be the wavelength assignment module. This evident is figure 3 as well as the text of Al-Salameh).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claim 13, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Al-Salameh et al. US 6,317,231 B1 (Al-Salameh).  
Re claim 13, 18, 19 and 20  
Al-Salameh disclosed the

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A wavelength exerciser ((NCE (240 of Figure 2) and Optical Monitoring Unit (260 of Figure 2)) for an agile network, comprising: a path selector (NCE (240 of Figure 2)) for selecting a test path between a source node (NCE (240 of Figure 2)) and a destination node (200 of Figure 2); a fault finder (OA 284 of Figure 2, step 384 of Figure 3) for detecting a fault whenever said test connection fails (e.g., col./line: 8/5-10); and a test connection controller (NCE (240 of Figure 2, e.g., col./line: 6/30-35) for controlling operation of said path selector, said wavelength assignment module and said fault finder.

Al-Salameh does not explicitly disclose the wavelength assignment module or call setup module (NCE and OMU) as assigning successively a plurality of wavelengths to said test path for establishing a test connection along said test path. Al-Salameh merely disclosed that the OA monitors the spectrum of each channel (see e.g., step 384 of Figure 3). However, it would have been obvious to one of ordinary skill in the art at the time of invention to successively test each wavelength. One is motivated as such since, the test run for each site and span, where a OSNR is calculated.

#### ***Allowable Subject Matter***

4. Claims 1-12 allowed.
5. Claim 14-17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

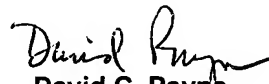
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7:00a - 4:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp

  
David C. Payne  
Primary Examiner  
AU 2633